

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-67-C - ORDER NO. 2005-678
MARCH 3, 2006

IN RE: Petition of MCImetro Access Transmission)	ORDER DENYING AND
Services, LLC for Arbitration of Certain Terms)	DISMISSING PETITION
and Conditions of Proposed Agreement with)	
Farmers Telephone Cooperative, Inc., Home)	
Telephone Co., Inc., PBT Telecom, Inc., and)	
Hargray Telephone Company, Concerning)	
Interconnection and Resale under the)	
Telecommunications Act of 1996.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration or Rehearing of Order No. 2005-544 (the Order) filed by MCImetro Access Transmission Services, LLC (MCI). Because of the reasoning as stated below, the Petition is denied and dismissed.

First, MCI alleges that the Order erroneously denies MCI the ability to provide wholesale services. MCI states that in ruling on Issue Nos. 6, 10(a), 15, and 17, the Commission, *inter alia*, erroneously held that MCI is not entitled to obtain interconnection, traffic exchange or number portability arrangements from the ILECs for purposes of providing services to Time Warner Cable Information Services, LLC (TWCIS) and other “indirectly” served customers (Order, at 11, 13), and that MCI is limited under the proposed interconnection agreement to providing telephone exchange service “directly” to MCI’s end user customers (*Id.* at 7). According to MCI, the

Commission thus acted in an arbitrary and capricious manner and abused its discretion in adopting conclusions that violate federal law and that were clearly erroneous in view of the reliable, probative and substantial evidence in the record of the proceeding. MCI's Petition enumerates various alleged "incorrect conclusions" reached by this Commission, and then goes on to espouse MCI's own view of the applicable law. We discern no error.

Clearly, as we stated in Order No. 2005-544, applicable statutory and case law support the rural local exchange carriers' (RLECs') position that MCI is not entitled to interconnection to act as an intermediary for a third party that will, in turn, provide services to end users. The federal definitions of "telecommunications carrier" and "telecommunications service" indicate that MCI is not entitled to seek interconnection with the RLECs with respect to the service that MCI proposed to provide indirectly to TWCIS' end user customers. This holding is consistent with interpretations given by the United States Court of Appeals for the District of Columbia Circuit, and with the decisions of other State commissions. We reiterate our holdings in Order No. 2005-544 as being correct statements of the law in this matter.

Next, MCI states that Order No. 2005-544 erroneously denies that intercarrier compensation for ISP-bound traffic to modems located outside the local calling area should be the same as for other ISP-bound traffic. Further, MCI states that with respect to Issue Nos. 8, 10(b), and 13, the Commission incorrectly held that ISP-bound traffic to the modems of MCI's end user customers that are located outside the local calling area, and are served by virtual NXX codes, is not subject to compensation pursuant to the FCC's *ISP Remand Order* and other law. MCI states a belief that the evidence and law

demonstrate that ISP-bound traffic, including ISP-bound traffic to modems located outside the local calling area, is interstate “information access” service under the FCC’s jurisdiction, and subject to the access charge regime, including intrastate access charges. Further, according to MCI, the Commission’s previous orders with regard to virtual NXX codes and intercarrier compensation did not specifically concern ISP-bound traffic, and recognized the applicability of the *ISP Remand Order*. Unfortunately, such allegations are unavailing.

As we stated in Order No. 2005-544, there is clear precedent in the Commission’s prior orders with respect to the practice of assigning Virtual NXXs, both with respect to ISPs and to other customers. This Commission has also ruled in two separate orders that the physical location of the customer determines the proper jurisdiction of calls. See Order No. 2005-544 at 23. We stated in that Order that there was no reason to deviate from prior rulings, since virtual NXX for dial-up calls to ISPs is not “ISP-bound Traffic,” but is interexchange traffic that is subject to the appropriate access charges. As we pointed out, the physical location of the calling and called parties determines the proper treatment of the call. Further, nothing in any FCC rule or order indicates anything to the contrary. Consequently, MCI’s arguments in this area are without merit.

Next, MCI alleges that the Order erroneously denies ISP-bound traffic the intercarrier compensation that the FCC has determined is appropriate. According to MCI, the Commission incorrectly held that, with respect to Issue No. 21, the issue of what compensation is owed for ISP-bound or out-of-balance traffic is moot. MCI states that the appropriate rate for all ISP-bound and out-of-balance compensation under the *ISP*

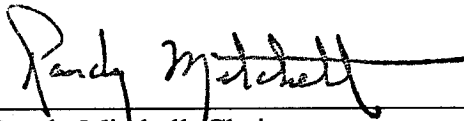
Remand Order and its progeny is \$0.0007 per minute, and because the ILECs proposed no rate for ISP-bound traffic, they should be required to accept that rate.

As was stated in Order No. 2005-544, however, this issue is indeed moot, because of our prior holding that interexchange traffic is subject to the appropriate access charges. Further, as noted in that Order, the RLECs noted that the Parties never discussed an appropriate reciprocal compensation rate during negotiations. All of the discussion revolved around whether or not there should be reciprocal compensation at all. Accordingly, not only is the issue moot, but it is not ripe for arbitration in any event.

Because of the above-stated reasoning, the Petition is without merit and is denied and dismissed.


This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Randy Mitchell, Chairman

ATTEST:



G. O'Neal Hamilton, Vice Chairman

(SEAL)